



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1997

Mr. James G. Nolan  
Supervising Attorney  
Texas Workforce Commission  
Legal Dept. - Information Release  
101 E. 15<sup>th</sup> Street, Room 651  
Austin, Texas 78748

OR97-2591

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111033.

The Texas Workforce Commission (the "commission") received a request for the following:

- 1) Records indicating where the state stands in meeting federal work participation rates from the first month the state has been required to keep these records to the most recent month available.
- 2) Communication within the commission regarding strategies for meeting the work participation rates or problems in meeting them.
- 3) Minutes to the Aug. 22 meeting of the Workforce Commission held in executive session.
- 4) The Commission's budget for the fiscal year 1998.

You inform us that you are "releasing the documents responsive to the first and fourth categories of records requested, as well as most of the records responsive to the second category of records requested." You further explain that you have released redacted copies of records responsive to request item 2. You have submitted a representative sample of these documents and claim that the redacted portions are excepted from disclosure under sections

552.107 and 552.111 of the Government Code.<sup>1</sup> Moreover, you assert that the requested minutes from the executive session are exempt from disclosure under section 551.104(c) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. *Id.* As the marked information in Exhibit A consists of an attorney's legal advice and opinions, we conclude that you may withhold the marked information under section 552.107(1).

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6.

Generally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.*

We have reviewed the information you have marked in Exhibits B and C, and we conclude that section 552.111 excepts the marked information from required public disclosure.

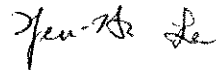
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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Finally, we consider your assertion that the minutes of the executive session are exempt from disclosure by section 551.104(c) of the Government Code. Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order issued under Subsection (b)(3).*" (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). The commission must withhold the requested minutes from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 111033

Enclosures: Submitted documents

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(w/o enclosures)